

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

XAVIER BECERRA, in his official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 1:19-cv-01672-GLR

JOINT STATUS REPORT

The parties submit this joint status report pursuant to the Court's January 11, 2022 order, ECF No. 121, to provide an update regarding the status of related appellate proceedings.

As the parties reported in their January 12, 2022 joint status report, Defendants filed notices of appeal to the United States Court of Appeals for the Second Circuit of the final judgments in the United States District Court for the Southern District of New York that vacated the rule that Plaintiff challenges in this case. *See State of New York v. U.S. Dep't of Health & Human Servs.*, No. 1:19-cv-4676-PAE, Notice of Appeal, ECF No. 255 (S.D.N.Y.) (*New York*); *Planned Parenthood Fed'n of Am., Inc. v. Azar*, No. 1:19-cv-5433-PAE, Notice of Appeal, ECF No. 123 (S.D.N.Y.) (*Planned Parenthood*); *Nat'l Family Planning & Reproductive Health Ass'n v. Azar*, No. 1:19-cv-5435-PAE, Notice of Appeal, ECF No. 129 (S.D.N.Y.) (*NFPRHA*). Intervenors in the Southern District of New York litigation also filed notices of appeal. *See New York*, Notice of Appeal, ECF No. 254; *Planned Parenthood*, Notice of Appeal, ECF No. 122; *NFPRHA*, Notice of Appeal, ECF No. 128. The Second Circuit scheduled oral argument in the two consolidated cases for March 16, 2021. However, on February 5, 2021, the Second Circuit granted Defendants'

consent motion to remove the cases from its oral argument calendar and to place the appeals in abeyance while new leadership at the U.S. Department of Health & Human Services (HHS) evaluates the issues the cases present. The Second Circuit directed Defendants to file stay status letters every thirty days. Most recently, on April 8, 2022, Defendants informed the Second Circuit that “HHS has now considered the issues and determined that it wishes to engage in notice-and-comment rulemaking to revisit the rule at issue in these appeals.” Defendants further informed the Second Circuit that “HHS has drafted a notice of proposed rulemaking and submitted it to the Office of Information and Regulatory Affairs (OIRA) within the Office and Management and Budget for review and approval.”

Defendants also appealed to the United States Court of Appeals for the Ninth Circuit, seeking review of the final judgment in the United States District Court for the Eastern District of Washington vacating the challenged rule on November 21, 2019, *Washington v. Azar*, No. 2:19-CV-00183-SAB (E.D. Wash.), as well as of the final judgments entered in three cases in the United States District Court for the Northern District of California where the court also vacated the challenged rule, *City & County of San Francisco v. Azar*, No. 3:19-cv-2405-WHA (N.D. Cal.); *California v. Azar*, No. 3:19-cv-2769-WHA (N.D. Cal.); *County of Santa Clara v. U.S. Dep’t of Health & Human Servs.*, No. 3:19-cv-2916-WHA (N.D. Cal.). The Ninth Circuit initially scheduled oral argument for February 8, 2021 but removed the consolidated cases from its argument calendar upon Defendants’ motion. The government subsequently filed periodic status reports requesting that the appeal continue to be held in abeyance, and those requests were granted.

On February 1, 2022, the Ninth Circuit directed the parties to provide another status report, by April 1, regarding whether the appeals will continue to be prosecuted, also indicating that further requests to hold the appeal in abeyance would be viewed with disfavor. In their April 1

status report, the government informed the court that HHS had drafted a notice of proposed rulemaking and submitted it to OIRA for review and approval and asked that the court continue to hold the appeals in abeyance for a period of six months, or until thirty days after the issuance of a final rule, whichever is sooner.

Dated: April 13, 2022

By: /s/ Jane Lewis

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